



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDC, MNSD, FF
MT, CNL, MNDC, MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlords for an order of possession for unpaid rent / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for landlord's use of property / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the return of the security deposit / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

As tenancy has ended and the tenants have vacated the unit, I consider the landlords' application for an order of possession to be withdrawn. For the same reasons I consider the tenants' application to be withdrawn for more time to make an application to cancel a notice to end tenancy, and cancellation of a notice to end tenancy for landlords' use of property.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the original fixed term of tenancy was from March 01, 2013 to February 28, 2014. Thereafter, tenancy continued on a month-to-month basis. Monthly rent of \$2,100.00 is due and payable in advance on the first day of each month, and a security deposit of \$1,000.00 was collected.

The landlords themselves were renters when events surrounding this dispute began to unfold. During a telephone conversation on March 03, 2014, the landlords informed the tenants that they themselves would soon be required to vacate their rental unit for reasons related to their landlord's plans with regard to the property. The tenants claim that by way of that telephone conversation the landlords effectively gave a 2 month notice to end tenancy for landlord's use of property. Following this, the tenants gave notice via letter sent by email dated April 01, 2014, that they would be vacating the unit effective May 31, 2014, and that they would withhold payment of rent for May 2014, in view of their understanding of entitlement under the Act pursuant to issuance of a 2 month notice. In this letter the tenants also provided their forwarding address.

The landlords claim that a 2 month notice to end tenancy for landlord's use of property was not issued or served on the tenants. After the tenants failed to pay rent for May 2014, the landlords issued a 10 day notice to end tenancy for unpaid rent dated May 02, 2014, a copy of which is not in evidence. The notice was personally served on that same date. However, the tenants made no further payment toward rent and they vacated the unit effective May 31, 2014. The landlords did not then advertise for new renters, as their intention was ultimately to move into the unit themselves. The landlords note that the tenants purchased their own home in the "2nd week of March."

The tenants filed their application for dispute resolution on May 02, 2014. The remaining outcomes sought in their application are compensation the equivalent of 1 month's rent, repayment of the security deposit, and recovery of the filing fee.

The landlords filed their application for dispute resolution on May 08, 2014. The remaining outcomes sought in their application are compensation for unpaid rent for May 2014, loss of rental income for June 2014, retention of the security deposit, and recovery of the filing fee.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of the respective applications and my related findings are set out below.

TENANTS

\$2,100.00: *the equivalent of 1 month's rent under the tenancy agreement*

Section 52 of the Act speaks to **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Section 49 of the Act speaks to **Landlord's notice: landlord's use of property**, and provides, in part, that a "notice under this section must comply with section 52 *[form and content of notice to end tenancy]*."

Section 51 of the Act addresses **Tenant's compensation: section 49 notice**, and provides in part:

51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Despite the miscellaneous and various types of exchanges between the parties, I find there is no evidence that the landlords served the tenants with a 2 month notice to end tenancy for landlord's use of property in the prescribed form. In the result, I find that the tenants have failed to meet the burden of proving entitlement to compensation "the equivalent of one month's rent payable under the tenancy agreement" pursuant to section 51 of the Act. This aspect of their application is therefore hereby dismissed.

\$1,000.00: *repayment of security deposit*

The disposition of the security deposit is addressed later in this decision.

\$50.00: *filing fee*

As the tenants have not succeeded with the principal remaining aspect of their application, the application to recover the filing fee is hereby dismissed.

Entitlement: Nil

LANDLORDS

\$2,100.00: *unpaid rent for May 2014*

As above, I have found that the tenants have failed to establish entitlement to compensation the equivalent of 1 month's rent under the tenancy agreement with respect to May 2014.

I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated May 02, 2014. The tenants did not pay the outstanding rent within 5 days of receiving the notice, and did not apply to dispute that notice. Subsequently, the tenants vacated the unit by May 31, 2014. In the result, I find that the landlords have established entitlement to the full amount claimed.

\$2,100.00: *loss of rental income for June 2014*

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that it was not unusual for the parties to be in contact via email. Accordingly, I find that by letter dated April 01, 2014 which was sent by email, the tenants gave notice to end tenancy effective May 31, 2014. I find that notice given by the tenants satisfies the above statutory provisions, and that the landlords' application for loss of rental income for June 2014 must be dismissed. In any event, the landlords took possession of the unit for their own use following the end of this tenancy, and it was not their intention to attempt to mitigate a loss of rental income for June by undertaking to find new renters.

\$50.00: *filing fee*

As the landlords have achieved some success with their application, I find that they have established entitlement to recovery of the full filing fee.

Entitlement: \$2,150.00

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, and provides in part as follows:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from the above, I hereby order that the landlords retain the security deposit of **\$1,000.00**, and I grant the landlords a **monetary order** for the balance owed of **\$1,150.00** (\$2,150.00 - \$1,000.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$1,150.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 30, 2014

Residential Tenancy Branch

